

Remarks

Claims 1-11 are pending. Claims 7-11 have been withdrawn pursuant to a previous restriction requirement.

The Examiner objected to Figures 1 and 2, requiring Applicant to designate Figures 1 and 2 as “prior art”. Applicant respectfully submits that the Examiner is in error. Figures 1 and 2 depict two configurations in which Applicant’s invention may be carried out. Website server 105 of each of Figures 1 and 2 does not depict a conventional website server, but the website server element recited in Applicant’s Claim 1. Thus, Applicant respectfully submits that designating Figures 1 and 2 “prior art” is improper.

The Examiner rejected Claims 1 and 4 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,484,176 (“Sealand”) in view of pages 3-9 of “Database Management Systems” (“Ramakrishnan”). With respect to Claim 1 the Examiner states:

Referring to claim 1: Sealand discloses an apparatus for allowing a seller of items to gather data from a server in order to optimize the sale of similar items, comprising: a server computer connected to the Internet (Figure 1A, items “12” and “23”; col. 4, lines 16-31, lines 58-60); a database on the server computer for storing data about items that have previously been sold (Figure 1A, item “14”; col. 1, lines 34-43; col. 3, lines 14-17; col. 4, lines 16-31); application software for allowing a user to request information from the database about previous sales of items similar to the one that the seller has for sale (Figure 1A, item “13”; col. 1, lines 34-43, line 64 -- col. 2, line 12; col. 4, lines 16-31; col. 6, line 63 - col. 7, line 7). Sealand does not disclose database management software for maintaining said database. However, Ramakrishnan discloses the advantages of using database management software for managing data in a database (pages 3, 4, 8, and 9). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate database management software in the invention of Sealand. One of ordinary skill in the art would have been motivated to do so in order to obtain

the benefits described by Ramakrishnan such as data independence, data integrity and security, and crash recovery. The cited prior art does not disclose an e-commerce website, or a website server. However, the Examiner notes that these limitations are not functionally involved in the elements of the recited apparatus. Therefore these limitations are deemed to be nonfunctional descriptive material. The elements of the apparatus would be the same regardless of what type of server or website were used. The difference between the Applicant's invention and the cited prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a website server and an e-commerce website in the invention of the cited prior art because such information does not functionally relate to the elements of the claimed system and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Applicant respectfully traverses the Examiner's rejection. As amended, Applicant's Claim 1 recites data gathering software for updating the database in the website server:

1. An apparatus for allowing a seller of items to gather data from e-commerce websites, comprising:
 - a website server computer connected to the Internet, including a database for storing data about previous sales of said items on one or more of the e-commerce websites,
 - b. database management software for maintaining said database,
 - c. data gathering software that visits the e-commerce websites to compile said data about said previous sales, and
 - d. application software for allowing a user to request from the database said data about said previous sales.

With data gathering software capable of visiting e-commerce websites, the database in the website server provides up-to-date information about even the most recent sales. Neither the data gathering software nor its attendant benefits is disclosed or suggested by Sealand or Ramakrishnan. Specifically, Sealand does not disclose or suggests how its real estate information database is updated. Likewise, Ramakrishnan also does not disclose or suggest data gathering software to update the database, Therefore, Applicant respectfully submits that Claim 1 and its dependent Claim 4 are each allowable over the combined teachings of Sealand and Ramakrishnan. Accordingly, reconsideration and allowance of Claims 1 and 4 are requested.

The Examiner rejected Claims 2-3 under 35 U.S.C. § 103(a) as being unpatentable over Sealand, in view of Ramakrisnan and further in view of the article “Intelligent agents: A Primer” (“Searcher”). The Examiner states:

Referring to claims 2 and 3: The cited prior art teaches or renders obvious all of the limitations of claim 1 as noted above. The cited prior art does not teach agent software that, at regular intervals, searches various websites to obtain data on sales about various items, or agent software that, at times determined by a seller, searches various websites to obtain data about sales of various items. However, Searcher discloses intelligent agents (i.e. agent software) for searching various websites to obtain data for commercial transactions (page 15, lines 19-22) based on user-specified or agent-specified rules (page 5, lines 23-27). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Searcher into the invention of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to automate the searching process and make the digital world less overwhelming, as taught by Searcher (page 1; page 3, lines 15-21).

Applicant respectfully traverses the Examiner’s rejection. As discussed above, neither Sealand nor Ramakrishnan discloses or suggests using data gathering software to

update a database. Thus, there is no motivation or suggestion in the prior art to combine Searcher's intelligent agents with the teachings of Sealand and Ramakrishnan. Thus, the Examiner's combination of Sealand's, Ramakrishnan's and Searcher's teachings is impermissible hindsight reconstruction using Applicant's claims as a blueprint. Accordingly, Applicant respectfully submits that Claims 2 and 3 are each allowable over Sealand, in view of Ramakrishnan and further in view of Searcher. Reconsideration and allowance of Claims 2-3 are therefore requested.

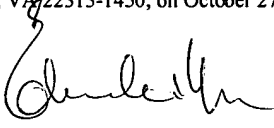
The Examiner rejected Claims 5-6 under 35 U.S.C. § 103(a) as being unpatentable over Sealand, in view of Ramakrishnan and further in view of the article "Intelligent agents: A Primer" ("Searcher"). The Examiner states:

Referring to claims 5 and 6: The cited prior art teaches or renders obvious all of the limitations of claims 2 and 3 as noted above. The cited prior art does not expressly disclose establishing a TCP/IP connection for enabling the agent software to communicate over the Internet with an e-commerce website. However, Official Notice is taken that it is old and well known in the art to establish a TCP/IP connection for providing Internet connectivity for any software. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate a TCP/IP connection for the agent software in the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow the agent software to communicate over the Internet.

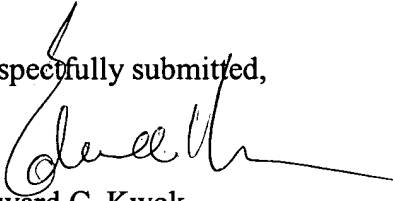
Applicant respectfully traverses the Examiner's rejection. As discussed above, neither Sealand nor Ramakrishnan discloses or suggests using data gathering software to update a database. Thus, there is no motivation or suggestion in the prior art to combine Searcher's network connection software in its intelligent agents with the teachings of Sealand and Ramakrishnan. Thus, the Examiner's combination of Sealand's,

Ramakrishnan's and Searcher's teachings is impermissible hindsight reconstruction using Applicant's claims as a blueprint. Accordingly, Applicant respectfully submits that Claims 5 and 6 are each allowable over Sealand, in view of Ramakrishnan and further in view of Searcher. Reconsideration and allowance of Claims 5-6 are therefore requested.

Accordingly, Applicant submits that all elected claims (i.e., Claims 1-6) are allowable and their allowance is earnestly sought. If the Examiner has any question regarding the above, the Examiner is respectfully requested to telephone the undersigned Attorney for Applicant at 408-392-9250.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on October 27, 2005.	
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Attorney for Applicant(s)	Date of Signature

Respectfully submitted,


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